

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(123)

CRM-M-25725-2022
Date of Decision: 04.07.2022

Kuldeep

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. V.K. Kaushal, Advocate with
Mr. M.K. Sharma, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The petitioner has approached this court by way of filing the present petition impugning the order dated 21.4.2022, passed by learned Addl. Sessions Judge, Fast Track Court, Sonapat, whereby the application filed by the petitioner under Section 311 Cr.P.C in FIR No.416 dated 13.7.2021 registered under section 4 of POCSO Act and section 376 IPC at Police Station, Rai, District Sonapat for recalling PW-3 (victim) and PW-4 (mother of the victim), has been dismissed.

The main thrust of the arguments raised by learned counsel for the petitioner is that the learned Trial Court has fallen in error in drawing the conclusion of rejecting the application filed by the petitioner. He submits that the petitioner was being represented by some other counsel at the time of cross-examination of the aforementioned two witnesses. He submits that thereafter he engaged a new counsel as the earlier counsel did not ask certain material questions to the aforesaid two witnesses i.e. PW-3 and PW-4 and hence it was expedient for recalling the aforesaid two witnesses. He submits that the provisions of Section 311 Cr.P.C are liberal in nature, whereas the learned Trial Court has failed to appreciate the same

and thus has illegally rejected the same resulting in causing injustice to the petitioner. Counsel submits that the provisions of section 311 Cr.P.C allow summoning of the witnesses at any stage and hence the Trial Court has fallen in error in declining the same and hence the impugned order deserves to be set aside.

I have heard learned counsel for the petitioner at length and have gone through the record carefully.

It is apparent that the petitioner is being prosecuted for the offences aforementioned. A perusal of the record would show that the victim is a minor and she along with her mother has been sought to be recalled, who had been cross-examined by the learned counsel for petitioner at length on earlier occasions also. The main contention of learned counsel for the petitioner for justifying the filing of application under Section 311 Cr.P.C is the engagement of a new counsel. There is no dispute regarding the provisions of section 311 Cr.P.C to be used liberally, however, the court has to be cautious in invoking its power under Section 311 Cr.P.C and examine, if the application under Section 311 Cr.P.C has been filed to delay the trial. Besides this, Section 311 Cr.P.C should be invoked if it appears to be essential to the just decision of the case and not for plugging the loopholes in the case. There is no gainsaying that the court has ample power under Section 311 Cr.P.C to prevent the injustice. However, in view of the law settled, the Hon'ble Supreme Court has laid down that the power under Section 311 Cr.P.C should be invoked only to meet the ends of justice. The power should be exercised for strong and valid reasons and it should be exercised with great caution and circumspection. Reliance in this

regard can be placed in case of *Swapan Kumar Chatterjee Vs. Central Bureau of Investigation 2019(14) SCC 328*. Section 311 Cr.P.C is reproduced hereunder:-

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

Section 30(5) of POCSO Act specifically enumerates that the court should not summon the minor to the court repeatedly.

Taking into consideration the arguments raised by counsel for the petitioner on the anvil of the law settled, this Court is of the opinion that the impugned order dated 21.4.2022, passed by learned Addl. Sessions Judge, Fast Track Court, Sonapat suffers from no illegality and resultantly the present petition is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

04.07.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No